

-15-

REMARKS

In response to the Final Office Action mailed October 4, 2005 Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. The claims as presented are believed to be in allowable condition. Claims 1-32 are pending in this Application.

Preliminary Matters

The Examiner issued a Final Rejection on October 20, 2005, which Applicants respectfully suggest is inappropriate at this time. MPEP §706.07(a) states “.. second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement ...”. Applicants respectfully submit that the Examiner has still not provided a reference which shows determining an estimated response usage including a cost estimate for processing the request. The Examiner has attempted to show such a limitation in a newly cited reference, U.S. Patent No. 3,702,006 to Page. While the citing of a new reference makes the final rejection at this time inappropriate, the newly cited reference itself still fails to show providing an estimated response usage including a cost estimate for processing the request,. Accordingly, the Examiner’s new grounds of rejection submitted in the rejection of October 20, 2005 was not necessitated by Applicants amendment, nor by the submittal of an IDS, and therefore the rejection of October 20, 2005 should not have been a final rejection. Applicants request that the finality of the rejection of October 20, 2005 be withdrawn.

Rejections under §102 and §103

Claims 1-6, 13-16, 19, 21-24, 27, and 29-32 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,070,052 to Ogasawara et al. (hereinafter Ogasawara). Ogasawara discloses a decision-theoretic satellite communications system. Ogasawara discloses, at column 2, lines 15-126 that the system includes a control unit which allocates communication system resources. At column 2, lines 37-39 Ogasawara discloses that the communication resources that are allocated are time slots, frequency channels or a combination of time slots and frequency channels. Ogasawara further discloses, at column 2 lines 40-49 that the network supply information (i.e., network resource availability) can include network connectivity, call delay times, satellite link reliability, ground node reliability, battery capacity of individual satellites and relative location of satellites. Ogasawara does not disclose or suggest the use of a cost estimate for selecting a resource. It appears the Examiner is attempting to use hindsight to read a cost estimate into Ogasawara, when Ogasawara simply does not consider a cost estimate as part of its resource selection process. The Examiner has failed to show anywhere in Ogasawara a cost estimate criteria, and is attempting to read this limitation into the prior art.

In contrast to Ogasawara, claim 1 recites that the estimated response usage includes a **cost estimate for processing the request**. Support for this can be found in the specification as filed at page 5, line 21 through page 6, line 3. The Examiner has further attempted to equate a cost estimate with an expected utility function, utility function and future utility function. The utility function cited by the Examiner has nothing to do with a cost estimate but instead with a grade of service, throughput, message delay, utilization, number of satellite hops, percentage of calls preempted, quality of service, and satisfaction of higher priority call requests, as recited at column 2, lines 50-55 of Ogasawara. Nothing

-17-

about a cost estimate is included or referenced by the listed factors considered by Ogasawara.

With respect to the rejection of claim 7, the Examiner stated that Ogasawara fails to teach comparing and selecting the resource with the lowest cost increment. The Examiner then stated that "Official Notice" is taken that the concept and advantages of providing the comparing and selecting of a resource with the lowest cost increment is well known and expected in the art. Applicants respectfully disagree with the Examiner's statement.

The Examiner has attempted to show such a limitation in a newly cited reference, U.S. Patent No. 3,702,006 to Page (hereinafter Page). A careful review of Page fails to show or suggest use of a cost estimate for selecting a resource. Page recites selecting a best channel based on which channel has the smallest total utilization. Page, like Ogasawara, uses a utilization rate in order to determine a best channel for handling a request and therefore also fails to disclose or suggest the use of a cost estimate in determining a resource.

Applicants therefore suggest that the steps of generating a cost estimate for processing a request in a data communications device for directing a request to process data is not well known in the art. If the Examiner is to maintain this rejection, the Examiner is respectfully requested to provide a reference showing this. For the reasons stated above, claim 1 is believed allowable over Ogasawara. Claims 3, 5 and 6 include similar language regarding generating a cost estimate for processing a request are also believed allowable over Ogasawara for the same reasons.

The Examiner rejected claim 13 for the same reasons as claim 1. Claim 13 recites **generating an economic metric** for each resource and further recites choosing the data communication device based on a comparison of the **economic metric**. As discussed above, Ogasawara fails to disclose or suggest the use of an economic metric (e.g., a cost) to determine a data communication

-18-

device. For the reasons stated above, claim 13 is believed allowable over Ogasawara.

Claims 21, 29 and 30 include similar language regarding an economic metric, and are also believed allowable over Ogasawara for the same reasons.

Claims 31-32 were rejected "for the same reasons as stated in the rejection of claims 14-20". Claims 17 and 20 were not rejected under 35 U.S.C. §102, therefore claims 31-32 cannot be rejected for the same reasons as claims 14-20. Further, claims 31 and 32 recite in part ..." generating a peak usage metric for each resource that represents a measurement of the highest level of usage attained for each resource over a current billing period based on the usage information". Ogasawara fails to disclose or suggest a billing period and therefore fails to disclose or suggest generating a peak usage metric that represents a highest level of usage obtained over a current billing period. If the Examiner is to maintain this rejection, the Examiner is requested to explicitly point out where in the prior art a billing period is discussed.

Claims 2, 4, 14, 15, 19, 22-24, 27 and 31-32 depend from one of claim 1, 13, or 21 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 1-6, 13-16, 19, 21-24, 27, and 29-32 under 35 U.S.C. §102(b) as being anticipated by Ogasawara is believed to have been overcome.

Rejections under §103

Claims 7-12, 17-18, 20, 25-26, and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ogasawara. Claim 7, as discussed above, discloses the use of a cost increase in selecting a resource to process a request from a client. Ogasawara fails to disclose or suggest the use of a cost increase in selecting a resource to process a request. Applicants further suggest that the step of using a cost increase for processing a request in a data communications device for directing a request to process data is not well known in the art. If the

-19-

Examiner is to maintain this rejection, the Examiner is respectfully requested to provide a reference showing this. The Examiner cited Pace as showing this, however as discussed above, Pace fails to disclose or suggest the use of a cost estimate. Accordingly, claim 7 is believed patentable over Ogasawara. Claims 9, 11 and 12 include similar language as claim 7 and are believed allowable for the same reasons. Claims 8, 10, 17, 18, 20, 25 and 26 depend from claims 7, 9, 13 or 21 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 7-12, 17-18, 20, 25-26, and 28 under 35 U.S.C. §103(a) as being unpatentable over Ogasawara is believed to have been overcome.

Conclusion

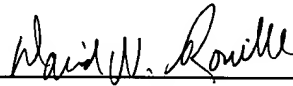
In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

-20-

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,

A handwritten signature in cursive script, reading "David W. Rouille", positioned above a horizontal line.

David W. Rouille, Esq.
Attorney for Applicants
Registration No.: 40,150
CHAPIN & HUANG, L.L.C.
Westborough Office Park
1700 West Park Drive
Westborough, Massachusetts 01581
Telephone: (508) 366-9600
Facsimile: (508) 616-9805

Attorney Docket No.: CIS00-3139

Dated: December 1, 2005